

GERRY ZAMORA
JOE ZAMORA

IBLA 91-43

Decided December 14, 1992

Appeal from a Record of Decision of the Glenwood Springs, Colorado, Resource Area Office, Bureau of Land Management, implementing the final project plan for the Roaring Fork Recreation Site. EA CO-078-0-119.

Affirmed.

1. Administrative Procedure: Administrative Review--Federal Land Policy and Management Act of 1976: Land Use Planning

A BLM decision implementing a final project plan for the development of a recreation site on public land will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons of modification or reversal.

APPEARANCES: Frederick W. Gannett, Esq., Aspen, Colorado, for appellants; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

In 1988, the United States acquired through land exchange, for administration by the Bureau of Land Management (BLM), approximately 23 acres of land adjacent to the Roaring Fork River near Carbondale, Colorado. In a draft site management plan (Draft Plan) dated January 26, 1990, and accompanying draft environmental assessment CO-078-0-019 (Draft EA), BLM proposed the creation of the Roaring Fork Recreation Site on part of that land to be managed as a day-use recreation area and riparian wildlife habitat. The Draft Plan, at page 4, proposed the following development and construction: The improvement of 450 feet of existing 12-foot-wide gravel road to 22-foot width; new construction of about 1,500 feet of gravel road 22-feet wide; a locking gate at the site entrance; the construction of a gravel surfaced parking lot for 10 vehicles with expansion/overflow space for an additional 10; the construction of a boat ramp, approximately 30 by 40 feet, designed for back-in trailers; and construction of a 5-unit picnic area. The Draft EA listed as alternatives, in addition to no action, providing walk-in access only from a parking lot to be constructed just inside the site boundary and developing the site with an alternative boat launching area.

On January 26, 1990, BLM released the Draft Plan and Draft EA for public comment, eventually extending the comment period until the end of March 1990. As a result of the comments received, BLM revised the proposed action as described in the Project Plan (Final Plan) and Final EA, dated August 23, 1990. In a Record of Decision, dated September 5, 1990, the Glenwood Springs Resource Area Manager approved the new proposed action, as amended by him, to include

construction of about 500' of gravel road and parking area for 5 vehicles, new fencing, tree/shrub plantings, seasonal toilet facilities, signing, Highway 82 intersection improvements, monitoring and maintenance, as described in the Proposed Action Alternative in the above reference Project Plan and Environmental assessment. Develop a "Watchable Wildlife" program [in] conjunction with wildlife habitat improvements. [1]

(Record of Decision at 1).

The Area Manager explained the rationale for his decision:

The Proposed Action is necessary for preservation of open space and natural values on the site, to enhance existing riparian habitat values, and to provide for public access while protecting resources and preventing conflicts related to uncontrolled visitor use.

Land along the Roaring Fork River is predominantly in private ownership, with few parcels in public ownership, open space and natural values will continue to diminish as land is developed for residential use. * * * Because of the private lands along the river, public access is scarce, and limited to restricted areas at county road bridge crossings which receive recreational use in spite of unsafe conditions and functional deficiencies. Public use of the river in the past has reportedly caused problems associated with trespass onto private land, sanitation, and vandalism.

A demand for recreational access to the river exists, and without adequate provisions for access, and visitor services, problems and conflicts associated with recreational use are likely to continue. The Roaring Fork site offers an opportunity to accommodate some of the public demand under safer and more functional conditions.

(Record of Decision at 1-2).

On October 4, 1990, owners of private property adjoining the site, Gerry and Joe Zamora, through counsel, filed a notice of appeal challenging the Area Manager's decision. In a cover letter accompanying that

1/ The Area Manager struck from that description, by drawing a line through it and initialing it with the date "9/5/90," the following: "[C]onstruction of a new pond, excavation of the pre-1984 river channel, river drop structure."

notice of appeal, counsel stated that he had been "engaged by a number of other abutting property owners for the purposes of opposing the BLM decision contained in the document identified as 'Project Plan and Environmental Assessment Roaring Fork Site.'" However, the notice of appeal was filed only on behalf of the Zamoras. Subsequently, following the expiration of the period of time for filing an appeal, counsel indicated in a supplemental statement of reasons that the Zamoras were joined in the appeal by certain individuals listed in Exhibit A to the supplemental statement, all of whom are landowners in the immediate vicinity of the site. That list included 16 people.

The Zamoras, through counsel, filed the notice of appeal in this case. No other landowner filed a timely appeal from the Area Manager's decision. In order to invoke the jurisdiction of this Board, a timely appeal must be filed. 43 CFR 4.410. To the extent 16 individuals seek to join in the timely appeal filed by the Zamoras, as party appellants, such a request must be denied. None of those individuals filed a timely appeal. 2/

On appeal, the Zamoras claim that there was overwhelming public opposition to the proposed use of the site and that limited support came only from commercial operators, such as fishing guides and river rafting outfitters. They also argue that while a public park is a permitted use for the land in question under the land use code for Garfield County, Colorado, such a use is incompatible with the character of the immediate neighborhood, which is exclusively residential. They assert that at a public meeting in March 1990, BLM representatives indicated that in response to the public opposition to the proposal, the site would not be developed and that they relied on those representations to their detriment. They allege that they have suffered damage to their property from trespassing members of the public using the adjacent site. They further contend that the land included in the 1988 exchange, which included that designated for the Roaring Fork Recreation Site, is subject to covenants of record that prohibit obnoxious and offensive activity that may disturb or annoy the occupants of surrounding property. They allege that the proposed use of the site as a public park recreation area is such an activity. Finally, appellants charge that access to the site is by a private easement that has been used exclusively for access by owners of single family residences and that BLM's attempt to convert the easement to a public easement is tantamount to condemnation without compensation and constitutes a taking.

In a detailed response prepared by the Glenwood Springs Resource Area, BLM, and appended to its answer, BLM argues that it carefully considered the existing character of the area, which it contends is not exclusively residential but includes natural open space, as well as utilities and transportation facilities. BLM points out that its Final Plan emphasizes

2/ Those 16 individuals do not seek, in the alternative, to be granted intervenor status. Therefore, we need not determine whether intervention should be granted. We note, however, that these 16 individuals' concerns with the BLM decision are being addressed through consideration of the Zamoras' appeal.

open space and natural riparian values and de-emphasizes facility dependent recreation activities. BLM asserts that the visual resource management objective was to retain the existing character of the landscape by approving landscape modifications that would not attract attention and would blend in with the existing landscape. BLM points out that the Final Plan calls for retaining the natural open space character of the site and adding only subordinate structural features, such as the gravel road, parking area, fencing, and signs.

Regarding the Zamoras' claim of property damage due to public misuse, BLM contends that property owners in the general vicinity of the site have experienced trespass problems in the past due to access from areas other than the land in question. BLM states: "We have posted signs along the existing fences to identify the property boundary and plan to install additional signing to ensure that visitors are aware of the extent of public lands and the lack of public access on private lands (BLM Response to Appeal at 2). BLM claims that one of its management goals is to help reduce trespass problems by increasing public awareness of private landowner concerns.

BLM argues that considerable public input was involved in developing the Final Plan and that it substantially revised the Draft Plan to accommodate public concerns such that the proposed action in the Final Plan is different from that in the Draft Plan, and that in addition, the Record of Decision further modified the Final Plan. See note 1, supra. BLM denies that any promise was made at the March 9, 1990, public meeting not to develop the site. BLM states that disposal of the land containing the site was considered but it was determined to retain it in public ownership. However, it acknowledges that the Zamoras and others were informed that a proposal for a land exchange involving such land could be considered. BLM asserts that no such proposal has been forthcoming.

BLM challenges the Zamoras' assertion that there was "absolutely no support for the proposed action." BLM contends that a review of the public comments, contained on pages 17-19 of the Final EA, shows that while landowners in the vicinity opposed the proposed action, some of those landowners supported the alternative considered in the Draft Plan of providing for walk-in access. BLM states that opposition was mainly targeted at development of a large scale river floater access/egress facility with an access road to the riverfront and developed boat launching area. BLM indicates that it specifically changed its proposed action between the Draft Plan and the Final Plan as a "direct result of public comments." Response to Appeal at 4. BLM states that it abandoned its riverfront development in favor of locating the parking area near the access road easement and requiring walk-in access to the river, thereby discouraging river floating activities due to the distance to the river (0.21 miles).

BLM asserts that the restrictive covenants relied on by the Zamoras are specific to the described parcels and that such descriptions do not include the parcel in question. BLM states that the deed for the land does not identify any restrictive covenants which would preclude the proposed management of the site.

The Zamoras' claim that BLM is converting a "private easement" to a public easement is not accurate, according to BLM. BLM explains that the

easement acquired by the United States to access the land in question is shared by several private landowners (not the Zamoras), as well as the United States, and does not include a restriction as to use.

[1] This Board has held that a BLM management decision implementing a resource management plan (RMP) will be affirmed if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons for modification or reversal. Uintah Mountain Club, 112 IBLA 287, 289 (1990); Wilderness Society, 90 IBLA 221, 232 (1986). In this case, the Record of Decision is not implementing an RMP, rather it implements a project plan for a recreation site. Nevertheless, we see no reason in this case to deviate from the standard of review applicable to decisions implementing RMP's.

Herein, the Draft Plan proposed a recreation site with a high degree of development, including the construction of a boat ramp on the Roaring Fork River. Following receipt of public comments, BLM adopted a modification of one of the alternative proposals set forth in the Draft Plan--development of a walk-in site, without boat launching facilities. The Final Plan and Final EA clearly support the development of the site as set forth in the Record of Decision. While the Zamoras raised a number of challenges to that decision, BLM's detailed response filed on appeal specifically refutes each charge. The record in this case, including BLM's detailed response, shows that BLM's Record of Decision was based on a consideration of all relevant factors. Rather than ignoring public comment concerning the site, as charged by the Zamoras, BLM utilized public comment in developing its Final Plan. The Zamoras have failed to show any reason for modification or reversal of the Record of Decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge